

REMARKS

Claims 1-3 and 5-15 are pending in this Application. Claims 4 and 16 have been previously canceled without prejudice. In the Office Action mailed June 14, 2006, the Examiner:

- rejected Claims 1-3 and 5-15 under 35 U.S.C. § 112, first paragraph, and 35 U.S.C. 132 as including new matter;
- rejected Claims 1-3 and 5-15 under 35 U.S.C. § 112, second paragraph, for not setting forth the subject matter regarded as the invention;
- maintained a rejection of Claims 1-3 and 5-15 under the judicially created doctrine of obviousness-type double patenting; and
- rejected Claims 1-3 and 5-15 under 102(a and b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Pawlowski et al. (Abstract from Silikattechnik 1982;33:339-40).

Applicants first wish to thank the Examiner for withdrawing rejections previously cited in the Office Action mailed January 17, 2006, and for stating that the withdrawn reference do not teach Applicants' claimed invention.

Applicants respectfully address herein the basis for each of the Examiner's rejections in the Office Action mailed June 14, 2006.

Claims Rejections - 35 U.S.C. § 112, first paragraph and 35 U.S.C. 132

On page 2 of the Office Action, the Examiner rejected Claims 1-3 and 5-15 under 35 U.S.C. 112, first paragraph, and 35 U.S.C. 132, for introducing a term "between about" not believed to be supported by the specification. Applicants disagree with the Examiner's statement and point out specific use of the phrase "between about" in para. [0026] with reference to the alkali metal oxide content of microspheres, and thereby show that the inclusion of the phrase "between about" in Claim 1 is not new matter. Nonetheless, Applicants have replaced the phrase "between about" with the term "about" in amended Claim 1 in accordance with the Examiner's statement on page 2 of the Office Action that there is support for the term "about" in the specification, thereby overcoming the rejections under 35 U.S.C. 112, first paragraph, and 35 U.S.C. 132. Applicants respectfully request entry and allowance of amended Claim 1 and all claims depending therefrom.

Claims Rejections - 35 U.S.C. § 112, second paragraph

On page 2 of the Office Action the Examiner rejected Claims 1-3 and 5-15 under 35 U.S.C. 112, second paragraph for introducing the phrase "between about," stated to be indefinite by the Examiner. While Applicants disagree with this suggestion, Applicants, as pointed out above, have removed the term "between" in amended Claim 1 in accordance with the Examiner's recommendation, thereby overcoming the rejection under 35 U.S.C. § 112, second paragraph.

Claims Rejections - Nonstatutory Type Double Patenting

On page 3 of the Office Action, the Examiner rejected Claims 1-3 and 5-15 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over all claims of US Publication No. 2004/0081827 (herein "'827 publication") and US Publication No. 2004/0080063 (herein "'063 publication"). Applicants point out that when two or more co-pending applications are filed on the same day, the Examiner is "to determine which application claims the base invention and which application claims the improvement" (see MPEP 804). Upon such a determination, the rejection in the base application is withdrawn (thereby removing the requirement for filing a terminal disclaimer), and the rejection may then be filed in the application claiming the improvement. Accordingly, Applicants respectfully request the Examiner point out such distinctions in order for Applicants to appropriately respond to the rejection of nonstatutory obviousness-type double patenting.

Claims Rejections - 35 U.S.C. § 102(a and b) or 35 U.S.C. § 103(a)

On page 4 of the Office Action, the Examiner rejected Claims 1-3 and 5-15 under 102(a and b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Pawlowski et al. (herein "Pawlowski"). The Examiner states, "'about' 5.2 wt.% CaO could potentially be inclusive of the amount of '4.5 wt% CaO'." Applicants respectfully submit amended Claim 1, amended to include "not less than 5.2 wt. % to about 30 wt. % calcium oxide," which is not potentially or otherwise inclusive of the amount of "4.5 wt% CaO" as suggested

by the Examiner with reference to a proposed teaching of Pawlowski. As previously pointed out, Table 13 and other Examples in the specification show that Applicants, at the time the invention was made, had envisaged the invention as claimed in amended Claim 1. As such, no new matter has been introduced with amended Claim 1. Accordingly, Pawlowski does not teach or suggest, expressly or inherently, each and every element of amended Claim 1, does not have elements arranged as required by amended Claim 1, nor does the reference teach or suggest Applicants' claimed invention as a whole. Moreover, because Pawlowski teaches away from the claimed invention by teaching an entirely different claimed range, there is no suggestion or motivation, either in the Pawlowski reference or to one of ordinary skill in the art, to modify Pawlowski in order to provide amended Claim 1. For this reason, there is no reasonable expectation of any success or predictability in Pawlowski to provide Applicants claimed invention. In view of all factual information, amended Claim 1 is not anticipated by nor as a whole obvious over Pawlowski. Applicants respectfully request entry and allowance of amended Claim 1, and all claims depending therefrom, for the reasons set forth herein.

CONCLUSION

Applicants respectfully submit that the Application is in condition for allowance, and pursuant to the filing of this Amendment and a Request for Continued Examination, Applicants earnestly seek allowance of Claims 1-3 and 5-15 as provided in the Listing of Claims beginning on page 3 of this paper. Should the Examiner have questions, comments, or suggestions in furtherance of the prosecution of this Application, please contact Applicants' representative at 214.999.4330. Applicants, through their representative, stand ready to conduct a telephone interview with the Examiner to review this Application if the Examiner believes that such an interview would assist in the advancement of this Application.

To the extent that any further fees are required during pendency of this Application, including petition fees, the Commissioner is hereby authorized to charge payment of any additional fees, including, without limitation, any fees under 37 C.F.R. § 1.16 or 37 C.F.R. § 1.17, to Deposit Account No. 07-0153 of Gardere Wynne Sewell LLP and reference Attorney Docket No. 129843-1104. In the event that any additional time is needed for this filing, or any additional time in excess of that requested in a petition for an extension of time, please consider this a petition for an extension of time for any needed extension of time pursuant to 37 C.F.R. § 1.136 or any other section or provision of Title 37. Applicants respectfully request that the Commissioner grant any such petition and authorize the Commissioner to charge the Deposit Account

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AMENDMENT AND RESPONSE
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referenced above. Please credit any overpayments to this same
Deposit Account.

This is intended to be a complete response to the Office
Action mailed June 14, 2006.

**Please direct all correspondence to the practitioner listed
below at Customer No. 60148.**

Respectfully submitted,

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Dated: August 17, 2006